

WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

HON. TODD TIAHRT

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. TIAHRT. Madam Chair, on June 30, 2009, the Obama Administration released details of its proposal to establish a Consumer Financial Protection Agency as an independent agency in the executive branch to regulate the provision of financial products and services to consumers. Five months later, Congressman FRANK, Chairman of the House Financial Services Committee, has turned this proposal into a 1,300-page bill that further extends the federal government's hands into more aspects of our economy.

I oppose this legislation for several reasons. One, it will permanently extend the Troubled Assets Relief Program (TARP)—something that I've been actively trying to end. I recently introduced legislation that will effectively end TARP by eliminating the Treasury Secretary's authority to utilize this program. This bill also creates another czar—a Credit Czar. This unelected official is granted the authority to restrict access to credit and impose taxes on consumers and small businesses.

These reforms will continue to perpetuate the bailout mentality that has plagued our Nation and eliminate access to credit for many small businesses and families at a time when they need it most.

One of the most troubling aspects of this bill is the vague, subjective standards that non-financial companies must meet. One such example of the bill's vagueness is found in the definition of businesses that engage in "financial activities" and those that pose a "systematic risk" to the stability of the financial market.

A business that engages in "financial activities," is now subject to increased regulations and fees. Exactly who comes under this definition, however, is not that clear. Maybe this will fall under the new "Credit Czar's" job description. Nonetheless, this bill will drastically affect businesses, specifically non-financial businesses that had no part in the irresponsible decisions that lead to the market collapse in 2008.

Vague definitions expose non-financial businesses that utilize the commodity and derivatives markets to manage risk and plan for the future. These markets, which date from the 1980s, involve hedgers. Hedgers, producers or commercial users of commodities, trade in futures to offset price risk. They use the markets to lock in today's price for transactions that will occur in the future, shielding their businesses from unfavorable price changes.

This bill restricts the use of these practical business tools. These practical tools encourage job creation and provide customized hedges to help businesses like farmers, grocery stores and energy companies to manage price volatility, so that retail prices can remain

low and stable. Yet H.R. 4173 authorizes government regulators to arbitrarily impose capital and margin requirements for "over the counter" (OTC) derivatives, and impose new capital requirements for cleared swaps, which would lead to increased retail prices and make it less likely that corporations could engage in responsible risk management.

Companies that utilize these markets to shield themselves from future risk and uncertainty in the energy markets should not be penalized for planning ahead. Unless the definition of "financial activities" and others like it are changed, companies who have not contributed to the market collapse will be required to shell out large sums of money as security for increased regulations. This will no doubt drive up operational costs and increase the price of energy.

In the midst of continuing economic turmoil, this bill increases the size of government, expands its reach in the marketplace, jeopardizes the safety and soundness of many of America's financial companies and non-financial companies, and significantly increases the cost of credit for all consumers at a time when consumers can least afford it.

For the above reasons, I am opposed to this bill. I encourage my colleagues to vote no.

CLIMATEGATE: THE DESTROYED DOCUMENTS

HON. JOE BARTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, December 11, 2009

Mr. BARTON of Texas. Madam Speaker, I submit the executive summary document concerning the suppressed comments on the EPA endangerment finding for inclusion in the RECORD. The entire document, 'Comments on Draft Technical Support Document for Endangerment Analysis for Greenhouse Gas Emissions under the Clean Air Act,' will be available on the Energy and Commerce Committee website.

COMMENTS ON DRAFT TECHNICAL SUPPORT DOCUMENT FOR ENDANGERMENT ANALYSIS FOR GREENHOUSE GAS EMISSIONS UNDER THE CLEAN AIR ACT

(By Alan Carlin, NCEE/OPEI)

Based on TSD Draft of March 9, 2009

March 16, 2009

We have become increasingly concerned that EPA has itself paid too little attention to the science of global warming. EPA and others have tended to accept the findings reached by outside groups, particularly the IPCC and the CCSP, as being correct without a careful and critical examination of their conclusions and documentation. If they should be found to be incorrect at a later date, however, and EPA is found not to have made a really careful independent review of them before reaching its decisions on endangerment, it appears likely that it is EPA rather than these other groups that may be blamed for any errors. Restricting the source of inputs into the process to these two sources may make EPA's current task easier but it may come with enormous costs later if they should result in policies that may not be scientifically supportable.

We do not maintain that we or anyone else have all the answers needed to take action now. Some of the conclusions reached in these comments may well be shown to be in-

correct by future research. Our conclusions do represent the best science in the sense of most closely corresponding to available observations that we currently know of, however, and are sufficiently at variance with those of the IPCC, CCSP, and the Draft TSD that we believe they support our increasing concern that EPA has not critically reviewed the findings by these other groups.

As discussed in these comments, we believe our concerns and reservations are sufficiently important to warrant a serious review of the science by EPA before any attempt is made to reach conclusions on the subject of endangerment from GHGs. We believe that this review should start immediately and be a continuing effort as long as there is a serious possibility that EPA may be called upon to implement regulations designed to reduce global warming. The science has and undoubtedly will continue to change and EPA must have the capability to keep abreast of these changes if it is to successfully discharge its responsibilities. The Draft TSD suggests to us that we do not yet have that capability or that we have not used what we have.

We would be happy to work with and assist anyone who might want to undertake such a serious review of the science and hope that these comments will at least illustrate the scope of what we believe is needed.

We hope that the reader will excuse the many unintentional errors that are undoubtedly in these comments. Our only excuse is that we had less than four days to draft these very lengthy and complex comments. It has not been possible to fully adhere to our usual very high standards of accuracy as a result. If there should be questions, we will be happy to try to correct any errors that anyone may find, however.

It is of great importance that the Agency recognize the difference between an effort that has consumed tens of billions of dollars by the IPCC, the CCSP, and some additional European, particularly British, funding over a period of at least 15 years with what two EPA staff members have been able to pull together in less than a week. Obviously the number of peer reviewed papers that exist and the polish of the summary reports cannot be compared. What is actually noteworthy about this effort is not the relative apparent scientific shine of the two sides but rather the relative ease with which major holes have been found in the GHG/CO₂/AGW argument. In many cases the most important arguments are based not on multi-million dollar research efforts but by simple observation of available data which has surprisingly received so little scrutiny. The best example of this is the MSU satellite data on global temperatures. Simple scrutiny of this data yields what to us are stunning observations. Yet this has received surprisingly little study or at least publicity. In the end it must be emphasized that the issue is not which side has spent the most money or published the most peer-reviewed papers, or been supported by more scientific organizations. The issue is rather whether the GHG/CO₂/AGW hypothesis meets the ultimate scientific test—conformance with real world data. What these comments show is that it is this ultimate test that the hypothesis fails; this is why EPA needs to carefully reexamine the science behind global warming before proposing an endangerment finding. This will take more than four days but is the most important thing we can do right now and in the coming weeks and months and possibly even years.

EXECUTIVE SUMMARY

These comments are based on the draft Technical Support Document for Endangerment Analysis for Greenhouse Gas

Emissions under the Clean Air Act (hereafter draft TSD) issued by the Climate Change Division of the Office of Atmospheric Programs on March 9, 2009. Unfortunately, because we were only given a few days to review this lengthy document these comments are of necessity much less comprehensive and polished than they would have been if more time had been allowed. We are prepared, however, to provide added information, more detailed comments on specific points raised, and any assistance in making changes if requested by OAR.

The principal comments are as follows:

As of the best information we currently have, the GHG/CO₂ hypothesis as to the cause of global warming, which this Draft TSD supports, is currently an invalid hypothesis from a scientific viewpoint because it fails a number of critical comparisons with available observable data. Any one of these failings should be enough to invalidate the hypothesis; the breadth of these failings leaves no other possible conclusion based on current data. As Feynman (1975) has said failure to conform to real world data makes it necessary from a scientific viewpoint to revise the hypothesis or abandon it (see Section 2.1 for the exact quote). Unfortunately this has not happened in the global warming debate, but needs to if an accurate finding concerning endangerment is to be made. The failings are listed below in decreasing order of importance in our view:

1. Lack of observed upper tropospheric heating in the tropics (see Section 2.9 for a detailed discussion).

2. Lack of observed constant humidity levels, a very important assumption of all the IPCC models, as CO₂ levels have risen (see Section 1.7).

3. The most reliable sets of global temperature data we have, using satellite microwave sounding units, show no appreciable temperature increases during the critical period 1978–1997, just when the surface station data show a pronounced rise (see Section 2.4). Satellite data after 1998 is also inconsistent with the GHG/CO₂/AGW hypothesis.

4. The models used by the IPCC do not take into account or show the most important ocean oscillations which clearly do affect global temperatures, namely, the Pacific Decadal Oscillation, the Atlantic Multidecadal Oscillation, and the ENSO (Section 2.4). Leaving out any major potential causes for global warming from the analysis results in the likely misattribution of the effects of these oscillations to the GHGs/CO₂ and hence is likely to overstate their importance as a cause for climate change.

5. The models and the IPCC ignored the possibility of indirect solar variability (Section 2.5), which if important would again be likely to have the effect of overstating the importance of GHGs/CO₂.

6. The models and the IPCC ignored the possibility that there may be other significant natural effects on global temperatures that we do not yet understand (Section 2.4). This possibility invalidates their statements that one must assume anthropogenic sources in order to duplicate the temperature record. The 1998 spike in global temperatures is very difficult to explain in any other way (see Section 2.4).

7. Surface global temperature data may have been hopelessly corrupted by the urban heat island effect and other problems which may explain some portion of the warming that would otherwise be attributed to GHGs/CO₂. In fact, the Draft TSD refers almost exclusively in Section 5 to surface rather than satellite data.

The current Draft TSD is based largely on the IPCC AR4 report, which is at best three years out of date in a rapidly changing field. There have been important developments in

areas that deserve careful attention in this draft. The list includes the following six which are discussed in Section 1:

Global temperatures have declined—extending the current downturn to 11 years with a particularly rapid decline in 1907–8; in addition, the PDO went negative in September, 2007 and the AMO in January, 2009, respectively. At the same time atmospheric CO₂ levels have continued to increase and CO₂ emissions have accelerated.

The consensus on past, present and future Atlantic hurricane behavior has changed. Initially, it tilted towards the idea that anthropogenic global warming is leading to (and will lead to) more frequent and intense storms. Now the consensus is much more neutral, arguing that future Atlantic tropical cyclones will be little different than those of the past.

The idea that warming temperatures will cause Greenland to rapidly shed its ice has been greatly diminished by new results indicating little evidence for the operation of such processes.

One of the worst economic recessions since World War II has greatly decreased GHG emissions compared to the assumptions made by the IPCC. To the extent that ambient GHG levels are relevant for future global temperatures, these emissions reductions should greatly influence the adverse effects of these emissions on public health and welfare. The current draft TSP does not reflect the changes that have already occurred nor those that are likely to occur in the future as a result of the recession. In fact, the topic is not even discussed to our knowledge.

A new 2009 paper finds that the crucial assumption in the GCM models used by the IPCC concerning strongly positive feedback from water vapor is not supported by empirical evidence and that the feedback is actually negative.

A new 2009 paper by Scafetta and Wilson suggests that the IPCC used faulty solar data in dismissing the direct effect of solar variability on global temperatures. Other research by Scafetta and others suggests that solar variability could account for up to 68% of the increase in Earth's global temperatures.

These six developments alone should greatly influence any assessment of “vulnerability, risk, and impacts” of climate change within the U.S., but are not discussed in the Draft TSD to our knowledge. But these are just a few of the new developments since 2006. Therefore, the extensive portions of the EPA's Endangerment TSD which are based upon science from the IPCC AR4 report are no longer appropriate and need to be revised before a TSD is issued for comments.

Not only is some of the science of the TSD out-of-date but there needs to be an explicit, in-depth analysis of the likely causes of global warming in our view. Despite the complexity of the climate system the following conclusions in this regard appear to be well supported by the available data (see Section 2 below):

A. By far the best single explanation for global temperature fluctuations appears to be variations in the PDO/AMO/ENSO. ENSO appears to operate in a 3–5 year cycle. PDO/AMO appear to operate in about a 60-year cycle. This is not really explained in the draft TSD but needs to be, or, at the very least, there needs to be an explanation as to why OAR believes that these evident cycles do not exist or why they are so unimportant as not to receive in-depth analysis.

B. There appears to be a strong association between solar sunspots/irradiance and global temperature fluctuations. It is unclear exactly how this operates, but it may be through indirect solar variability on cloud formation. This topic is not really explored

in the Draft TSD but needs to be since otherwise the effects of solar variations may be misattributed to the effects of changes in GHG levels.

C. Changes in GHG concentrations appear to have so little effect that it is difficult to find any effect in the satellite temperature record, which started in 1978.

D. The surface measurements (such as HADCRUT) are more ambiguous than the satellite measurements in that the increasing temperatures shown since the mid-1970s could either be due to the rapid growth of urbanization and the heat island effect or by the increase in GHG levels. However, since no such increase is shown in the satellite record it appears more likely that urbanization and the UHI effect and/or other measurement problems are the most likely cause. If so, the increases may have little to do with GHGs and everything to do with the rapid urbanization during the period. Given the discrepancy between surface temperature records in the 1940–75 and 1998–2008 and the increases in GHG levels during these periods it appears even more unlikely that GHGs have as much of an effect on measured surface temperatures as claimed. These points need to be very carefully and fully discussed in the draft TSD if it is to be scientifically credible.

E. Hence it is not reasonable to conclude that there is any endangerment from changes in GHG levels based on the satellite record, since almost all the fluctuations appear to be due to natural causes and not human-caused pollution as defined by the Clean Air Act. The surface record is more equivocal but needs to be carefully discussed, which would require substantial revision of the Draft TSD.

F. There is a significant possibility that there are some other natural causes of global temperature fluctuations that we do not yet really understand and which may account for the very noticeable 1998 temperature peak which appears on both the satellite and surface temperature records. This possibility needs to be fully explained and 2009 DRAFT discussed in the Draft TSD. Until and unless these and many other inconsistencies referenced in these comments are adequately explained it would appear premature to attribute all or even most of what warming has occurred to changes in GHG/CO₂ atmospheric levels.

These inconsistencies between the TSD analysis and scientific observations are so important and sufficiently abstruse that in our view EPA needs to make an independent analysis of the science of global warming rather than adopting the conclusions of the IPCC and CCSP without much more careful and independent EPA staff review than is evidenced by the Draft TSP. Adopting the scientific conclusions of an outside group such as the IPCC or CCSP without thorough review by EPA is not in the EPA tradition anyway, and there seems to be little reason to change the tradition in this case. If their conclusions should be incorrect and EPA acts on them, it is EPA that will be blamed for inadequate research and understanding and reaching a possibly inaccurate determination of endangerment. Given the downward trend in temperatures since 1998 (which some think will continue until about 2030 given the 60 year cycle described in Section 2) there is no particular reason to rush into decisions based on a scientific hypothesis that does not appear to explain much of the available data.

Finally, there is an obvious logical problem posed by steadily increasing U.S. health and welfare measures and the alleged endangerment of health and welfare discussed in this draft TSD during a period of rapid rise in at least CO₂ ambient levels.

This discontinuity either needs to be carefully explained in the draft TSD or the conclusions changed.

WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. KUCINICH. Madam Chair, I rise today in opposition to H.R. 4173. Although I am supportive of the Consumer Financial Protection Agency as well as other provisions in the bill, ultimately I do not think H.R. 4173 adequately addresses the causes of the financial crisis, and I do not believe the reforms are sufficient to prevent another financial crisis from occurring.

In testimony before the Committee on Financial Services earlier in the year, Dr. Robert Johnson of the Roosevelt Institute stressed that reform of the derivatives markets is absolutely central to fixing the financial system. In fact, he went so far as to say that without strong and comprehensive derivatives reform, any effort to address the problem of systemic risk would be rendered impotent.

H.R. 4173 makes some progress toward regulating derivatives by establishing regulations for clearing and regulating over-the-counter derivatives; however the bill—especially in light of the House's adoption of the Murphy amendment—contains a number of loopholes that sophisticated financial industry insiders will exploit with ease. For example, the Murphy amendment's expansion of the exemption of derivatives users, jeopardizes the integrity of the whole reform. As Dr. Johnson said in his testimony, the challenge is to "[preserve] as much scope for deriving value from derivative instruments for end users without making the definition of end user so broad that it allows large scale financial institutions to effectively continue their unregulated OTC practices and at the same time assures that end users do not themselves, through loopholes, contribute to a weakening of the integrity of the financial system." H.R. 4173 does not accomplish this.

Credit rating agencies were also at the heart of the financial crisis. It was their bogus ratings on opaque securitizations and other financial products that fueled the asset bubble, and it was the fundamental conflict of interest in their "issuer pays" business model that strengthened their position in the industry.

Unfortunately H.R. 4173, rather than address the fundamental conflict of interest in the "issuer pays" model, instead sidesteps the issue and gives the Securities and Exchange Commission more authority to mitigate conflicts of interest. The years leading up to the financial crisis, however, taught us some very important lessons regarding the enforcement authority of the SEC: when officials at the Agency operate with a philosophical disagree-

ment with its mission, it does not matter what tools they have; they simply will not use them. In the interest of long-term, systemic reform, H.R. 4173 should have directly addressed this problem.

As everyone knows, another major cause of the crisis was gargantuan, systemically-interrelated institutions headed by shortsighted executives that scarcely had a notion of their complexity. H.R. 4173 attempts to address "too big to fail" by creating a resolution authority for unwinding and dissolving large institutions that have failed. Simply put, too big to fail is too big to exist. Real financial reform would include prohibiting financial institutions from metastasizing to the point where they threaten the whole system. Real reform would also include limits on interconnectedness and risk. In the words of Nobel laureate Joseph Stiglitz, "Such an approach won't prevent another crisis, but it would make one less likely—and less costly if it did occur."

Yet another cause of the financial crisis was the contagion that spread from the \$8 trillion housing bubble that burst. The housing bubble was fueled by predatory and subprime mortgages that were securitized on a massive scale. The manager's amendment included language from H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, and I applaud Chairman FRANK for acknowledging the importance of including this legislation. The manager's amendment also included \$1 billion for the Neighborhood Stabilization Program to help communities address the problem of abandoned and foreclosed properties. My Domestic Policy Subcommittee did important work on how to target this federal assistance most effectively, I was glad to see its inclusion, and I supported the manager's amendment.

Curiously absent from H.R. 4173, however, is real reform of the process of securitization or any acknowledgement whatsoever that the federal government, through interventions at the Federal Reserve and the Treasury, is the securitization market right now. H.R. 4173 would only require that securitizers retain 5 percent of their assets, called "skin in the game." However, regulators would have the power to raise that amount, but only to 10 percent, and could also eliminate it altogether. This would hardly act as a deterrent to what has become an abused practice. Securitization, done wisely and thoughtfully, is vital to our economy; however by failing to address this issue H.R. 4173 simply allows the abuse of securitization to continue.

There is no reform of the government-sponsored enterprises (GSEs) that subjugated the "public good" aspect of their missions to the demands of their investors for higher profits.

Finally, H.R. 4173 does not fix the problem caused by the conflict of interest in the Federal Reserve's dual mandate. I applaud the efforts of my colleagues RON PAUL and ALAN GRAYSON to include in the bill the authority of the Government Accountability Office to conduct audits of the Federal Reserve, but the financial crisis—and the government's extraordinary response—taught us monetary policy and regulatory policy must be exclusive. Relying on one entity to conduct both activities so vital to a healthy financial system will inevitably give rise to conflicts of interest. This bill, however, further conflates these policies at the Fed by giving the Fed more regulatory authority.

H.R. 4173 cannot be the end of this process, but I fear passage of this bill will preclude further consideration of financial reform. If Congress rests on the laurels of H.R. 4173, we will be back here sooner rather than later to debate the same issues all over again. I look forward to continuing efforts to enact real, comprehensive reform of the financial services industry.

TRIBUTE TO OFFICER PHILIP DAVIS OF PELHAM, ALABAMA

HON. SPENCER BACHUS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, December 11, 2009

Mr. BACHUS. Madam Speaker, let us honor of the memory of Officer Philip Davis, the first officer in the history of the Pelham, Alabama Police Department to die in the line of duty.

Officer Davis was performing his sworn duty to protect the public when he was shot and fatally wounded during a traffic stop on I-65 in Shelby County on December 3.

Philip Davis was a four and a half year veteran of the Pelham Police Department. He previously was an officer in Calera and with the University of Alabama Police Department.

Officer Davis was devoted to the law, his community, his faith, and especially his family. He felt that it was his calling to serve and protect others.

Pelham Police Chief Tommy Thomas said, "He was an excellent police officer. He loved his job and we loved him."

Shelby County District Attorney Robbie Owens said, "Philip was a genuinely good, Christian person and dear police officer. We will all miss Philip. He was a good man."

Pelham Mayor Don Murphy said, "This was a very sad day for the City of Pelham and for law enforcement all across our nation. Philip was an asset to both the Police Department and the City of Pelham. His dedication, personality and commitment will be greatly missed. Our thoughts and prayers are with his young family."

Philip Davis was just 33 years old. Our sympathies and prayers are with his wife, Paula, and his two young children, Sarah and John.

In a close-knit community like Pelham, Philip Davis was a friend, neighbor, and role model.

The depth of the community's love for him was clear from the way citizens lined up in cars and along the streets during memorial services that were attended by more than one thousand fellow law enforcement officials.

All law enforcement officers and their families live with a special burden every day. They know there are risks involved with every call, whether it is serious or seemingly routine. Yet our police officers willingly accept these risks in order to keep our communities safe. That is why our officers deserve nothing less than our highest respect and complete support.

The untimely death of any police officer is a loss not only to the immediate community, but to our nation.

The National Law Enforcement Officers Memorial in Washington, which is not far from the U.S. Capitol, is our national tribute to the sacrifices that courageous members of the law enforcement community have made to keep us secure. The name of Officer Philip Davis